

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

VIERA,

Defendant.

Case No. 14-cr-00120-EMC-14

ORDER TO SHOW CAUSE

Docket No. 1139

On April 6, 2020, Michael Viera filed a motion to vacate and correct his conviction and sentence under 28 U.S.C. § 2255. Docket No. 1139. In that petition Mr. Viera summarized his convictions and sentence as follows:

On July 24, 2015, the Court imposed an aggregate 132-month sentence on Viera. That sentence consisted of 72 months served concurrently on one count of racketeering conspiracy, 18 U.S.C. § 1962(d), two counts of assault with a dangerous weapon in aid of racketeering, 18 U.S.C. § 1959(a)(3), and one count of conspiracy to commit assault with a dangerous weapon in aid of racketeering, 18 U.S.C. § 1959(a)(6); and a 60-month mandatory consecutive sentence on one count of possession of a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(c). The predicate acts for the 924(c) conviction were the two conspiracy counts.

Id. (internal citations omitted). He now asserts that, pursuant to *United States v. Davis*, 139 S. Ct. 2319 (2019), conspiracy offenses no longer qualify as “crimes of violence” that can support a section 924(c) conviction. *See* Docket No. 1139 at 1 (quoting *Davis*, 139 S. Ct. at 2336 (2019)). Accordingly, he asks the Court to vacate his section 924(c) conviction and correct his sentence.

Pursuant to the Federal Rules Governing Section 2255 Proceedings, the Court has conducted a preliminary review of the motion. *See* Fed. R. Governing § 2255 Proceedings 4 (providing that “[t]he judge who receives the motion must promptly examine it”). Based on its

1 review of the petition, the Court orders the United States to respond to the motion. In light of the
2 fact that Mr. Viera contends he could be entitled to immediate release, the United States is ordered
3 to respond within 14 days of the filing of this order. If the United States files an answer, it must
4 conform to Rule 5 of the Federal Rules Governing § 2255 Proceedings. If the United States files
5 an answer, Mr. Ruiz may submit a reply within 21 days of the date of this order.

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7 **IT IS SO ORDERED.**

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9 Dated: April 28, 2020

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12 EDWARD M. CHEN
13 United States District Judge
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